

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Special Services Fees and Classifications

Docket No. MC96-3

COMMENTS OF
AMERICAN BANKERS ASSOCIATION AND
THE NEWSPAPER ASSOCIATION OF AMERICA
ON "STATEMENT OF THE UNITED STATES POSTAL SERVICE
CONCERNING ORDER NO. 1126"
(August 13, 1996)

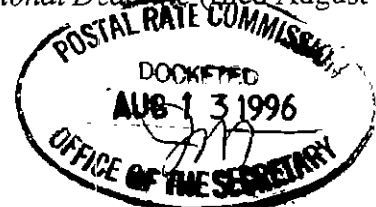
The American Bankers Association ("ABA") and the Newspaper Association of America ("NAA") hereby submits comments on the "Statement of the United States Postal Service Concerning Order No. 1126."¹ The Postal Service's *Statement* provides no excuse for its failure to comply with two direct orders of the Commission, and its failure to provide relevant evidence. Accordingly, whatever other remedy the Commission may consider, the conditions appear fully satisfied for imposition of sanctions pursuant to Section 3624(c)(2).²

Section 3624(c)(2) of the Postal Reorganization Act provides, in relevant part:

In any case in which the Commission determines that the Postal Service has unreasonably delayed consideration of a request made by the Postal Service under section 3622 by failing to respond within a reasonable time to any lawful order of the Commission, the Commission may extend the 10-month

¹ Filed on August 2, 1996 ("*Statement*").

² See *Office of the Consumer Advocate Motion Under 39 U.S.C. § 3624(c)(2) For Day-To-Day Extensions in the Procedural Schedule and the Ten-Month Decisional Deadline* (filed August 12, 1996).



period [for consideration of the Request] by one day for each day of such delay.³

While extensions of time pursuant to Section 3624(c) should not be taken lightly, the Postal Service's defiance of two direct Commission orders is also not a matter to be taken lightly.

First, there is no dispute that the Postal Service has now flatly refused to comply with two separate orders of the Commission: Order No. 1120 and Order No. 1126.⁴ Thus, the Postal Service has failed "to respond within a reasonable time."⁵

Second, the Postal Service has not alleged that the Commission's Orders are unlawful. Therefore, the USPS has failed to respond to a "lawful order of the Commission."

Third, inasmuch as the relative institutional cost assignments borne by any class or subclass of mail of type of mail service is always relevant to any case involving rates, the Postal Service's refusal to comply with two Commission Orders directing it to provide correct attributable cost calculations for the various types of mail and mail services does, in fact, delay consideration of the merits of the case.

Fourth, that delay is "unreasonable." The Postal Service's *Statement* fails to provide any reasonable defense of its defiance. While it is clear that the Postal Service does not like to apply the single subclass costing methodology in attributing city carrier

³ 39 U.S.C. § 3624(c)(2).

⁴ To be sure, the Postal Service did seek further consideration of Order No. 1120, which Order No. 1126 denied.

⁵ The Postal Service could not seriously contend that its "Statement" constitutes a response within a reasonable time. "Defy" is simply not a synonym for "respond."

costs, its preference for another approach is no excuse for failing to comply with the Commission's Orders.

The Postal Service's *Statement* refers to several decisions of the Governors expressing their disagreement with the Commission's repeated determinations, on full evidentiary records, that the single subclass costing approach is the proper methodology for attributing city carrier costs. Cost attribution determinations are, of course, the area of the Commission's expertise and institutional responsibilities.⁶ Thus, the USPS's *Statement*, in short, is a direct frontal challenge to the Commission's legal responsibilities and institutional prerogatives.

Several specific points in the USPS's *Statement*, however, warrant separate attention. One, the Governors nowhere acknowledge that the single subclass stop methodology is soundly based on record evidence (of the Postal Service's own expert witnesses!) and solid economics -- and that it is necessary to implement the statutory *requirement* that rates for services cover their costs.⁷ None of the quotations from the Governors cited by the USPS come to grips with the Congressional objective underlying the concept of cost attribution "of having each class bear those costs incurred by the Service to provide postal services to that class of mail." *Opinion and Recommended*

⁶ See *National Association of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 833 (1983).

⁷ The statute is quite clear that the only ratemaking provision having the status of a legal requirement is that rates cover "the direct and indirect costs attributable to that class or type." 39 U.S.C. § 3622(b)(3). The other ratemaking criteria, notably the "value of service" to the sender and the recipient, are merely factors, not requirements.

Decision, Docket No. R84-1 at 132, ¶ 3028 (Sept. 7, 1984) (*R84-1 Op.*). More recently, the Commission reaffirmed that cost attribution seeks to ensure that the "strict prohibition of cross-subsidy" desired by the Congress is achieved. *Opinion and Recommended Decision*, Docket No. R87-1 at 105, ¶ 3012 (Mar. 4, 1988) (*R87-1 Op.*). Put simply, the Commission has recognized that Congress elevated the necessity of avoiding cross-subsidy to the highest priority; other considerations are simply less important.

Two, the Governors' contention (made in December 1994) that the single subclass stop methodology "could unnecessarily limit the ability of the Postal Service to price its services in a manner which reflects the actual costs of postal operations, and could thereby frustrate the legitimate business interests of the Postal Service"⁸ reflects a surprising misunderstanding of the single subclass stop methodology and of how the Commission sets rates. The Commission repeatedly has found the single subclass stop methodology better reflects "the actual costs of postal operations" precisely because it attributes *all* of the costs demonstrably incurred by a particular subclass, rather than merely a portion. This helps to ensure that the Postal Service's rates in fact avoid cross-subsidies. Both the Commission and the Postal Service also make use, in pricing, of the volume variable cost information that the Service collects. That the Commission rightly has concluded that the Act's prohibition of cross-subsidy is better met through application of the single subclass stop

⁸ See *Decision of the Governors on Recommended Decision*, Docket No. R94-1 at 13 (Dec. 12, 1994). The language quoted on page 5 of the *USPS Statement* from the Governors' decision on the Further Recommended Decision in the same proceeding, which contends that the single subclass stop methodology "does not trace the costs needed for ratesetting," continues in the same vein.

methodology certainly does not present the horrible scenario described by the Governors.

Three, the Governors' contention (made in February 1995) that the single subclass stop methodology "is likely to impair the value of the postal system to the public" has not been borne out by experience and simply cannot be given significant weight. The Postal Service is currently enjoying a record financial performance, based on the rates recommended by the Commission using the single subclass stop methodology. Surely the Governors could not be suggesting that the Postal Service should be allowed to charge below-cost rates.

Four, the Governors' concern that the single subclass stop methodology poses "adverse consequences to the business and public service imperatives of the Postal Service"⁹ is entirely overstated. Putting aside whether the Postal Service, as an establishment of the Executive Branch of the federal government, properly has *any* "business imperatives," there simply is *no* legitimate "imperative" to price any subclass below its costs. And labelling a desire to be "more competitive" with private sector firms that pay taxes and must earn a return on capital as an institutional "imperative" of the USPS, if anything, reflects the urgency of ensuring that the Postal Service's rates for subclasses cover *all* of the costs incurred in providing those subclasses.

Finally, the Postal Service's contention that the Commission -- or any other party -- labors under some "due process" obligation to "explain and defend" the single subclass

⁹ See USPS Statement at 4, quoting Governors' Decision on Further Recommended Decision, Docket No. R94-1 at 3.

methodology "on the record" is mistaken and seems to be based on a selective reading of history.¹⁰ The Postal Service neglects to mention that the current single subclass stop methodology has been the subject of two full hearings, on the basis of a full record, including the testimony (on cross-examination) of the *Postal Service's own expert witnesses*.¹¹

The Commission adopted its current method of cost attribution in its Opinion and Recommended Decision on Remand in Docket No. R90-1 (Sept. 27, 1994), and reaffirmed that approach in Docket No. R94-1, both in its initial and Further Recommended Decisions. All three decisions were fully supported by substantial evidence on the record before it, including the direct and cross-examination testimony of the Postal Service's own witnesses. While postal management may prefer a different attribution technique, the fact of the matter is that the Commission has thoroughly and carefully considered the views of the Postal Service on this subject, and found them wanting under the Act.

If, however, the Postal Service chooses to continue to contest the Commission's methodology, its proper course would be to provide the cost attributions according to the

¹⁰ *USPS Statement* at 5.

¹¹ These include the testimony of Professors Baumol and Panzar, whose testimony was endorsed by the Governors themselves. *See, e.g.*, Docket No. R90-1 Remand Tr. 3/1005-06 (Baumol); Tr. 2/771 (Panzar). It is also based on the economic principles of the Commission witness Sowell in the Docket No. R90-1 remand proceeding. For example, Professor Baumol testified: "if the sole purpose of the attributable cost calculation is to test for and prevent cross subsidy, then the unambiguous implication is that this must be measured by incremental cost." Tr. 3/1016. As it is well-established that the purpose of the attributable cost calculation is precisely "to test for and prevent cross subsidy," then Professor Baumol's testimony supports the full attribution of the costs of single subclass stops.

methodology specified by the Commission and to sponsor yet again evidence regarding why it would prefer a different methodology. Such an approach would allow the Postal Service to satisfy the Governors' expectation that the USPS "would continue to question single-subclass costing in future proceedings"¹² while complying with the Commission's well-founded insistence on correct costing methodologies.

For the foregoing reasons, American Bankers Association and the Newspaper Association of America respectfully submits that the Postal Service's *Statement* offers no legitimate rationale for the Service's continued defiance of legitimate Commission orders.

¹² See *USPS Statement* at 4, quoting *Decision of the Governors on Further Recommended Decision*, Docket No. R94-1 at 22.

Accordingly, the Commission can find that sanctions under Section 3624(c)(2) are appropriate.

Respectfully submitted,

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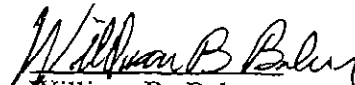
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August 13, 1996

Certificate of Service

I hereby certify that I have this 13th day of August, 1996, served the foregoing document upon the United States Postal Service in accordance with sections 12 and 20(c) of the rules of practice.


William B. Baker